

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HARLEY-DAVIDSON MOTOR COMPANY,
INC.,

Plaintiff,

v.

FOSHAN YU JUN JEWELRY COMPANY
LIMITED, et al.,

Defendants.

Case No. 24-cv-00012

Judge Virginia M. Kendall

Magistrate Judge Keri L. Holleb Hotaling

**PLAINTIFF’S MOTION FOR RECONSIDERATION REGARDING THE COURT’S
DECISION TO LIMIT THE SCOPE OF THE ASSET RESTRAINT**

Plaintiff Harley-Davidson Motor Company, Inc. (“Harley-Davidson” or “Plaintiff”) respectfully requests for the Court to reconsider its decision to limit the scope of the asset restraint to \$10,000 as to Defendant dopethug.com (Def. No. 105) (“Defendant”).

Defendant is an egregious and intentional trademark counterfeiter that offered for sale over 500 counterfeit Harley-Davidson products. Plaintiff respectfully requests reconsideration because the Court improperly placed the burden on Plaintiff to show Defendant’s sales. Instead, the burden should have been placed on Defendant to show that the frozen funds were not the proceeds of counterfeit sales. The law does not and cannot permit funds to be released to a high-volume offshore trademark counterfeiter who simply says that “I sold three products”¹ without providing any explanation or documentation for the remaining \$4.7 million that flowed through their PayPal

¹ Defendant’s counsel used the same playbook in *Luxottica Group S.p.A., et al. v. The P’ships, et al.*, No. 18-cv-6608 (N.D. Ill. Jan. 4, 2024) and filed a similar motion to get frozen funds released, including filing declarations with blatant omissions and misinformation regarding sales. *See id.* at Docket Nos. 50, 52, 60 and 61. The Court in that case denied the motion. *See id.* at Docket No. 75. Once that motion was denied, defendants stopped participating in the case. *Id.*

account. Once the funds have been released, Defendant will likely move the funds to an offshore bank account outside the jurisdiction of this Court and stop participating in this lawsuit. *See* [15] at ¶¶ 6-11. An asset restraint of \$10,000 amounts to a slap on the wrist and cost of doing business for Defendant compared to the \$4.7 million that flowed through the account. Trademark counterfeiting laws and asset restraints exist to provide real consequences for counterfeiters like Defendant. Plaintiff respectfully requests that this Court reconsider its decision to reduce the asset restraint to \$10,000. Alternatively, Plaintiff requests that the Order [79] be stayed while the parties conduct an evidentiary hearing.

I. The Court Improperly Put the Burden on Plaintiff Instead of Defendant

“To exempt assets from an asset freeze, the burden is on the party seeking relief to present documentary proof that particular assets are not the proceeds of counterfeiting activities.” *Johnson & Johnson v. Advanced Inventory Mgmt.*, No. 20-cv-3471, 2020 U.S. Dist. LEXIS 248831, at *8 (N.D. Ill. July 20, 2020) (cleaned up); *see also, e.g., Monster Energy Company v. Wensheng*, 136 F. Supp. 3d 897, 910 (N.D. Ill. 2015). Using this standard, Courts in this District and other districts regularly decline to modify asset freeze orders based on ambiguous or unpersuasive evidence submitted by parties seeking to modify asset restraints. *Johnson & Johnson*, 2020 U.S. Dist. LEXIS at *11 (“It is [defendant’s] burden to come up with something that shows the Court that the universe of potential counterfeiting profits is less than what is currently frozen.”); *Entertainment One UK Ltd. v. 2012Shiliang*, 384 F. Supp. 3d 941, 954 (N.D. Ill. 2019) (disregarding as incredible defendant’s statement that the counterfeit product purchased by an investigator just happened to be the only one they ever sold); *H-D U.S.A., LLC v. Guangzhou Tomas Crafts Co., Ltd.*, 2017 WL 6733685, at *6 (N.D. Ill. Dec. 18, 2017) (disregarding conclusory statement that “none of the [funds] currently on deposit * * * is derived from”

counterfeit sales); *Monster Energy Co.*, 136 F. Supp. 3d at 910 (refusing to modify asset freeze where defendants did not submit “any evidence regarding their PayPal account transactions to show that these funds are not the proceeds of counterfeiting activities”); *Luxottica USA LLC v. The Partnerships et al.*, 2015 WL 3818622, at *4-5 (N.D. Ill. June 18, 2015) (declining to lift freezes on five of seven accounts based on defendants’ spreadsheets that were unsupported by a declaration); *North Face Apparel Corp. v. TC Fashions, Inc.*, 2006 WL 838993, at *3-4 (S.D.N.Y. Mar. 30, 2006) (keeping order in place when the parties disputed the aggregate sales numbers and profit margins).

Placing this burden on Defendant is proper since Defendant is the only individual or entity that has access to information about its sales and its PayPal account. *See Johnson & Johnson*, 2020 U.S. Dist. LEXIS at *15-16 (“...the ball is in Defendants' court—they know from whom they purchased merchandise; what they paid for it; what they sold it for; how many bank accounts they have; whether Iadeposa is apt to flee to Dubai; and so on. It is their burden to come up with something that shows the Court that the universe of potential counterfeiting profits is less than what is currently frozen.”). Plaintiff has no access to Defendant’s sales information, especially since Defendant took steps to omit information from its PayPal transaction logs.² Specifically, in Defendant’s PayPal transaction logs under “item_title,” the entries include no identifying information about the products sold as shown in Figure 1:

² PayPal maintain logs of all transactions that flow through the account.

trans_id	item_title	trans_crted_time
21383653229540027.0	n/a	2023-04-01T00:11:23
21383653229540005.0	purchase items	2023-04-01T00:11:23
21383447563808260.0	n/a	2023-04-01T00:40:41
21383447563808244.0	purchase items	2023-04-01T00:40:41
21383649811881308.0	n/a	2023-04-01T00:50:49
21383649811881286.0	purchase items	2023-04-01T00:50:49
21383447571833471.0	n/a	2023-04-01T01:17:11
21383447571833455.0	purchase items	2023-04-01T01:17:11
21383658594484149.0	n/a	2023-04-01T01:41:50
21383658594484133.0	purchase items	2023-04-01T01:41:50
21383627669428025.0	n/a	2023-04-01T02:23:59
21383627669428009.0	purchase items	2023-04-01T02:23:59
21383653269188252.0	n/a	2023-04-01T03:16:01
21383653269188236.0	purchase items	2023-04-01T03:16:01
21383649846163811.0	n/a	2023-04-01T03:24:15
21383649846163795.0	purchase items	2023-04-01T03:24:15
21383645634838412.0	n/a	2023-04-01T03:26:02
21383645634838396.0	purchase items	2023-04-01T03:26:02
21383452406292328.0	n/a	2023-04-01T03:38:00
21383452406292306.0	purchase items	2023-04-01T03:38:00
21383447605520498.0	n/a	2023-04-01T03:40:59
21383447605520476.0	purchase items	2023-04-01T03:40:59
21383452412500520.0	n/a	2023-04-01T03:56:19
21383452412500504.0	purchase items	2023-04-01T03:56:19
21383653286578891.0	n/a	2023-04-01T04:11:57
21383654336972462.0	n/a	2023-04-01T04:11:58
21383654336969605.0	n/a	2023-04-01T04:11:58
21383653287314570.0	n/a	2023-04-01T04:14:11
21383653287314554.0	purchase items	2023-04-01T04:14:11
21383653288460321.0	n/a	2023-04-01T04:17:37
21383653288460305.0	purchase items	2023-04-01T04:17:37
21383649866550283.0	n/a	2023-04-01T04:25:09
21383645654692412.0	n/a	2023-04-01T04:25:10
21383645654696381.0	n/a	2023-04-01T04:25:11
21383653291180013.0	n/a	2023-04-01T04:26:00
21383653291179991.0	purchase items	2023-04-01T04:26:00
21383649869874354.0	n/a	2023-04-01T04:34:51
21383649869874332.0	purchase items	2023-04-01T04:34:51
21383447624642855.0	n/a	2023-04-01T04:35:16
21383447624642841.0	purchase items	2023-04-01T04:35:16
21383649870056964.0	n/a	2023-04-01T04:35:24
21383649870056948.0	purchase items	2023-04-01T04:35:24
21383645658380257.0	n/a	2023-04-01T04:35:59
21383645658380241.0	purchase items	2023-04-01T04:35:59
21383653295196391.0	n/a	2023-04-01T04:38:37
21383653295196369.0	purchase items	2023-04-01T04:38:37
21383452430880918.0	n/a	2023-04-01T04:48:50
21383452430880896.0	purchase items	2023-04-01T04:48:50
21383452430979567.0	n/a	2023-04-01T04:49:09
21383452430979553.0	purchase items	2023-04-01T04:49:09

Figure 1

In contrast, transaction logs from other businesses include identifying and/or descriptive information about the products sold like this example from a typical business in Figure 2:

Transaction Type	Status	Item Title
Import Tax Payment	Completed	353123903117:For Chevy Silverado 2 Drop Shackles 1999 - 07 Chevrolet GMC Lowering Kit Parts:
Import Tax Payment	Completed	353123954647:Alignment Cam Bolt Kit Front Lower Control Arm for Jeep Wrangler TJ JK Cherokee:
Import Tax Payment	Completed	353138981170:Dash Defrost Front Grille Panel Cover Speaker Fits 98-05 S10 S15 Blazer Jimmy:
Import Tax Payment	Completed	353109729566:3rd Brake Light Lens Red Cover for 1994-2004 Chevy S-10 GMC Sonoma Extended Cab:
Import Tax Payment	Completed	353087209961:Aluminum Black Rear Bumper Grab Bar For 2004-2013 Yamaha YFZ 450:
Import Tax Payment	Completed	353137989588:4pcs Golf Cart Standard Fender Flares Front & Rear for EZGO TXT Models 1994-2013:
Import Tax Payment	Completed	353096428291:Double DIN Truck Dash Kit For 1999-2002 Silverado Sierra + Full-Size Black ABS:
Import Tax Payment	Completed	353131474973:For 2009-2014 Ford F150 Pickup Truck Passenger Right Side Tail Brake Light Lamp:
Import Tax Payment	Completed	353137989588:4pcs Golf Cart Standard Fender Flares Front & Rear for EZGO TXT Models 1994-2013:
Import Tax Payment	Completed	353108326922:Gray ABS Center Console Jump Seat Lid Latch For 2010-2018 Ford F-150 F150:
Import Tax Payment	Completed	353114951183:6X Trailer Amber Marker LED Light Double Bullseye 10 Diodes Clearance Lamp:
Import Tax Payment	Completed	353124103787:Tailgate Bed Latches Pair For John Deere Gator - VGA12138 & VGA12139:
Import Tax Payment	Completed	353109717730:Roll Bar Grab Handle Strap On Handle (PAIR) Black For Jeep Wrangler YJ TJ JK SUV:
Import Tax Payment	Completed	353116211200:Aluminum Black Front Bumper for Honda TRX 450R 450ER 400EX 400X ATV:
Import Tax Payment	Completed	353137989588:4pcs Golf Cart Standard Fender Flares Front & Rear for EZGO TXT Models 1994-2013:
Import Tax Payment	Completed	353123903117:For Chevy Silverado 2 Drop Shackles 1999 - 07 Chevrolet GMC Lowering Kit Parts:
Import Tax Payment	Completed	353096558114:Pair Door Handle For Toyota Tacoma 95-04 Front Outside Outer 69220 69210 35020:
Import Tax Payment	Completed	353108326922:Gray ABS Center Console Jump Seat Lid Latch For 2010-2018 Ford F-150 F150:
Import Tax Payment	Completed	353110692614:Paper Towel Holder Stainless Steel Under Cabinet Kitchen Bathroom Wall Mount New:
Import Tax Payment	Completed	353089503000:Tail gate Tailgate Handle Bezel Trim For Chevy Silverado GMC Sierra 1999-2007:
Import Tax Payment	Completed	353079933215:Grey ABS Dash Cover For Dodge Ram 98 99 00 01 02 Molded Dashboard Overlay Cap:
Import Tax Payment	Completed	353087209961:Aluminum Black Rear Bumper Grab Bar For 2004-2013 Yamaha YFZ 450:
Import Tax Payment	Completed	353089503000:Tail gate Tailgate Handle Bezel Trim For Chevy Silverado GMC Sierra 1999-2007:
Import Tax Payment	Completed	353131474973:For 2009-2014 Ford F150 Pickup Truck Passenger Right Side Tail Brake Light Lamp:
Import Tax Payment	Completed	353089176768:For 2004-2015 Volvo VNL Series Truck Cap Chrome Bumper Cover Trim durable ABS:
Import Tax Payment	Completed	353087209961:Aluminum Black Rear Bumper Grab Bar For 2004-2013 Yamaha YFZ 450:
Import Tax Payment	Completed	353123903117:For Chevy Silverado 2 Drop Shackles 1999 - 07 Chevrolet GMC Lowering Kit Parts:
Import Tax Payment	Completed	353111840556:Chrome Exterior Door Handle Driver Front for 03-Up Nissan Murano Rogue Infiniti:
Import Tax Payment	Completed	353139049354:Aluminum Front Bumper For Honda TRX 450R 400EX Intimidator Black series:
Import Tax Payment	Completed	353096558114:Pair Door Handle For Toyota Tacoma 95-04 Front Outside Outer 69220 69210 35020:
Import Tax Payment	Completed	353089503000:Tail gate Tailgate Handle Bezel Trim For Chevy Silverado GMC Sierra 1999-2007:
Import Tax Payment	Completed	353123903117:For Chevy Silverado 2 Drop Shackles 1999 - 07 Chevrolet GMC Lowering Kit Parts:
eBay Auction Payment	Denied_Cancelled	353083610905:New Flat Black Front Grille Shell For 2011-2014 Dodge Charger:
Import Tax Payment	Denied_Cancelled	353083610905:New Flat Black Front Grille Shell For 2011-2014 Dodge Charger:
Display only transaction row	NOT-CLASSIFIED	
Display only transaction row	NOT-CLASSIFIED	
Cancellation of Hold for Dispute Resc	Denied_Cancelled	
Import Tax Payment	Completed	353089503000:Tail gate Tailgate Handle Bezel Trim For Chevy Silverado GMC Sierra 1999-2007:
Import Tax Payment	Completed	353123903117:For Chevy Silverado 2 Drop Shackles 1999 - 07 Chevrolet GMC Lowering Kit Parts:
Import Tax Payment	Completed	353090624181:Pair Rear Outside Door Handle for 99-07 Chevy Silverado GMC Sierra Extended Cab:
Import Tax Payment	Completed	353123903117:For Chevy Silverado 2 Drop Shackles 1999 - 07 Chevrolet GMC Lowering Kit Parts:
Import Tax Payment	Completed	353116211200:Aluminum Black Front Bumper for Honda TRX 450R 450ER 400EX 400X ATV:
Import Tax Payment	Completed	353108326922:Gray ABS Center Console Jump Seat Lid Latch For 2010-2018 Ford F-150 F150:
Import Tax Payment	Completed	353109592166:For Jeep Compass Patriot Dodge Caliber Front Frame Crossmember Subframe Cradle:
Import Tax Payment	Completed	353090624181:Pair Rear Outside Door Handle for 99-07 Chevy Silverado GMC Sierra Extended Cab:
Import Tax Payment	Completed	353116225819:Wide Grab Bar Bumper Rear Aluminum For Yamaha Raptor 700R 2006-2018:
Import Tax Payment	Completed	353134049477:For Chevy GMC Outer Exterior Door Handle passenger Rear Right Extended Cab:

Figure 2

Defendant likely omitted identifying information in its transaction logs to avoid having the account shut down by PayPal. In any event, since PayPal does not have this information, Plaintiff cannot obtain this information from PayPal. This information is only in Defendant's custody, underscoring the need for the burden to be placed on Defendant.

II. Defendant Did Not Meet Its Burden

A. Defendant's Purported Sales Evidence is Not Credible

The only evidence Defendant has shown to support its assertion that it made only three infringing sales is, what appears to be, a self-constructed chart showing sales data. *See* [70-2]. Defendant does not establish a foundation for this document and does not provide an explanation as to the source of the document. The Declaration of Wenjie Sun [70-1] does not authenticate the document, and the document otherwise has no circumstantial indicia of authenticity: for example, the chart in the document appears to be cropped and each page displays a different number of columns.

This document is further contradicted by Figure 3 (below), which is a screenshot from Defendant's webstore showing that there were at least 40 customer reviews for just the ten (10) products shown out of 500 total results in Defendant's store for the word "Harley," indicating that Defendant sold at least 40 of just those specific counterfeit Harley-Davidson products. Defendant likely sold much more than that, given that not all customers leave reviews after making a purchase, and defendant had nearly 490 other listings of counterfeit Harley-Davidson products.

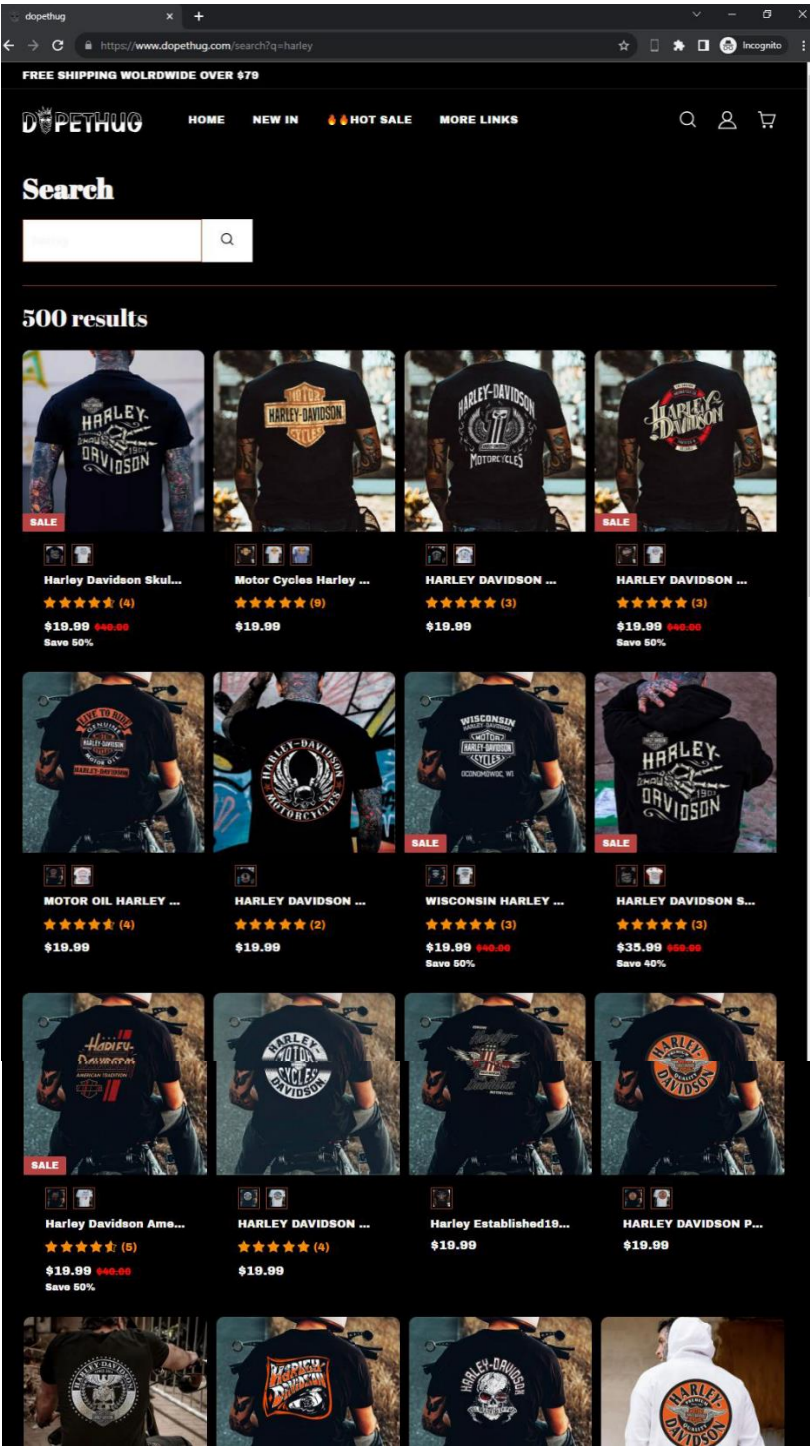


Figure 3

Plaintiff does not have access to any sales information for the other 490 products of these 500 search results for “Harley” in Defendant’s webstore because Defendant has refused to provide this information. Additionally, as described above and seen in Figures 1 and 2, Defendant has taken steps to omit such information about its sales from its PayPal records, which further prevents Plaintiff’s access to the information.

B. Defendant Did Not Provide Accounting of Its \$4.7 Million of Revenue or \$98,000 Account Balance

Plaintiff has obtained data from PayPal showing \$4,709,412.13 in revenue was received by Defendant’s PayPal account, and a balance of \$98,629.20 was restrained. [72-1] at ¶ 3. This is the extent of information Plaintiff is able to obtain from PayPal, since Defendant omitted identifying information about the products sold from its PayPal records, as described above and shown in Figure 1. Defendant has not provided the specific product sales accounting for the \$4,709,412.13 in revenue received by Defendant’s PayPal account or the \$98,629.20 restrained in Defendant’s PayPal account. [72-1] at ¶ 6. To exempt assets from an asset freeze, “[t]he burden is on the party seeking relief to present documentary proof that particular assets [are] not the proceeds of counterfeiting activities.” Other Courts have required an accounting of the revenue constituting the frozen funds to confirm the funds were not the result of illicit counterfeiting before modifying an asset restraint. *See e.g., Monster Energy Co.* 136 F. Supp. 3d at 910 (refusing to modify asset freeze where defendants did not submit “any evidence regarding their PayPal account transactions to show that these funds are not the proceeds of counterfeiting activities”).

Defendant failed to provide any of this data. Defendant has also refused to provide any identifying information regarding any other financial accounts that receive payments or hold assets for Defendant besides PayPal. [72-1] at ¶ 6. Defendant has further refused to provide information regarding other stores operated by Defendant or Defendant’s search methodology and procedure

for determining whether a product offered for sale was a counterfeit Harley-Davidson product. [72-1] at ¶ 6. Defendant's failure to provide any of this information or documentation should not be rewarded by a modification of the asset restraint.

Accordingly, Plaintiff respectfully requests that the Court reconsider its decision to limit the asset restraint to \$10,000, and instead reimplement the asset restraint to cover the \$98,629.20 frozen in Defendant's PayPal account. In the alternative, Plaintiff respectfully requests that the Order [79] limiting the scope of the asset restraint be stayed until an evidentiary hearing can be held.

Dated this 16th day of April 2024.

Respectfully submitted,

/s/ Justin R. Gaudio

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April 2024, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send a “Notice of Electronic Filing” to the parties of record in this case.

/s/ Justin R. Gaudio

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